

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Criminal No. 1:20-CR-10
	:	
	:	
v.	:	(Judge Wilson)
	:	
	:	
JAMES LARNERD	:	Electronically filed

**MOTION TO SUPPRESS EVIDENCE**

AND NOW, this 19<sup>th</sup> day of August, 2020, comes Defendant James Larnerd, by counsel, William A. Fetterhoff, Esq., and presents the following:

1. On June 3, 2019 an Application for Search Warrant was prepared by Patrolman John C. Houser of the North Cornwall Police Department, Lebanon, PA. The Search Warrant was approved and signed the same day by District Justice Anthony Verna, Lebanon, PA. See Search Warrant and Affidavit of Probable Cause, Exhibit A.

2. The Search Warrant authorized a search of 327 Quittapahilla Drive, North Cornwall Township, Lebanon County, PA, a residence rented and occupied in common by James Larnerd, Rebecca Swift, Dusty Shutter, and Felicia Revelly. The owner of the premises was Gregory Kline.

3. On June 4, 2019 the Search Warrant was executed by the North Cornwall Township Police and other law enforcement authorities. Various items were seized, including controlled substances, drug paraphernalia, cell phones, two firearms described in the Indictment as a Highpoint Model CF380 ACP handgun, S/N P8167295 and a Highpoint C9 Luger handgun, S/N P10044713, and other items. See Receipt/Inventory of Seized Property, with Exhibit A.

4. The Affidavit of Probable Cause for the Search Warrant, dated June 3, 2019, set forth information given to Patrolman Houser by Erma Williams, a former resident of the house at 327

Quittapahilla Drive. Ms. Williams was interviewed by Patrolman Houser on the telephone on May 31, 2019 and again in person on June 1, 2019. Ms. Williams stated that James Larnerd was selling narcotics from the residence and was in possession of two handguns. She indicated that she had purchased methamphetamine from Defendant Larnerd on multiple occasions while she was living at 327 Quittapahilla Drive. She stated that she lived in the house from March/April 2018 to December 2018. Erma Williams did not indicate whether she had made any such purchase more recently than the time she claimed that she left the residence, approximately six months before the Search Warrant. See Affidavit of Probable Cause, paragraphs 5 and 6, Exhibit A.

5. The Affidavit of Probable Cause also indicated that Erma Williams asserted to Patrolman Houser that on May 29 or 30, 2019 at 327 Quittapahilla Drive she had observed Defendant Larnerd deliver \$800 worth of methamphetamine to Gregory Kline; and had observed Defendant Larnerd handle two firearms. See Affidavit of Probable Cause, paragraphs 2 and 6, Exhibit A.

6. The Affidavit of Probable Cause further indicated that on June 1, 2019 Patrolman Houser interviewed Joanne Nye, a neighbor, by telephone. On May 17, 2019 Joanne Nye had called the police to report “suspicious vehicle traffic” to 327 Quittapahilla Drive. She reported at that time that multiple vehicles visited the residence every evening, and vehicle occupants entered the residence for short periods of time such as 10-15 minutes before leaving. Ms. Nye stated that the activity was still taking place as of June 1, 2019. See Affidavit of Probable Cause, paragraph 4, Exhibit A.

7. Patrolman Houser’s Incident Report entry for June 2, 2019, concerning his interview of Erma Williams on June 1, 2019, indicated that she claimed that upon moving out of the house in December, 2018 she had property in a storage unit, but that after she moved out of the house the owner of the residence, Gregory Kline, transferred her property from the storage unit back into 327 Quittapahilla Drive. Erma Williams asserted to Office Houser that she had been trying to retrieve

her property from the residence for months by speaking with Gregory Kline, but he and James Larnerd refused to return her property. See Incident Report, p.8-10, Exhibit B.

8. The Affidavit of Probable Cause for the Search Warrant omits any mention of Ms. Williams' above-stated reason for originally calling the police (at first anonymously) on May 31, 2019 to accuse James Larnerd of drug trafficking and possession of firearms, except to note that Ms. Williams went to the house on that date "to retrieve property." Exhibit A, paragraph 6.

9. Despite Erma Williams admitting to Officer Houser that she had a personal grievance against both James Larnerd and Gregory Kline; despite Erma Williams also admitting to Officer Houser that she had been within the previous six month a regular user of methamphetamine; despite the fact that as of the date of the Affidavit of Probable Cause, June 3, 2019, Erma Williams had a criminal record in both York County, PA (No. CP-67-CR-4436-2018) and Dauphin County, PA (No. CP-22-4429-2018), and pending charges (complaint filed January 7, 2019) in Dauphin County, PA (No. CP-22-1195-2019); and despite the fact that there were no exigent circumstances, the North Cornwall Police did not attempt to corroborate any of the accusations made by Ms. Williams, except to speak by telephone with Joanne Nye, who had made a report of "suspicious vehicle traffic" to the house. Aside from the accusations of Erma Williams, the report of "suspicious vehicle traffic" was the only other information the police relied upon to support the Search Warrant. The police did not conduct any surveillance of the property, did not set up any controlled buys at the property, did not attempt to interview the owner of the property, did not attempt to identify and interview any other person alleged to have purchased any controlled substance at the property, did not interview any neighbors other than Joanne Nye, and did not attempt in any other manner to corroborate the accusations made by Erma Williams concerning the distribution of controlled substances, the presence of two firearms, or any other matter asserted by Ms. Williams.

10. Officer Houser's Incident Report entry for June 1, 2019 at 11:22 (p.9) states as follows:

Upon researching previous calls to 327 Quittapahilla Dr I found this department was dispatched to contact Middletown Police Department on 11/23/2018. Middletown PD was investigating a stolen firearm. They were investigating James Larnerd as a suspect.

I made contact with Middletown PD who advised the theft involved a 9mm Beretta (SN# P94011Z), critical defense ammunition, and 143 full metal jacket rounds. They advised that they did not arrest Larnerd but have yet to recover the firearm.

Exhibit B, p.9.

11. On January 7, 2019 Officer Keegan Wenner of the Middletown Police Department filed a criminal complaint against Erma Williams charging her with criminal conspiracy and theft of the 9mm Beretta, Critical Defense ammunition, and 143 additional rounds referred to by Officer Houser in his above-quoted June 1, 2019 Incident Report entry. See Middletown Police Criminal Complaint and Affidavit of Probable Cause, Exhibit C. Commonwealth v. Erma Jane Williams, No. CP-22-CR-1195-2019.

12. Although Officer Houser reported that on June 1, 2019 he "made contact with Middletown PD," neither Officer Houser's Incident Report nor his Affidavit of Probable Cause made any reference to the fact that Erma Williams was charged with criminal conspiracy and theft of the very same gun and ammunition for which James Larnerd was under investigation by the Middletown Police as of November 23, 2018, but for which Erma Williams was charged on January 7, 2019.

13. Erma Williams claimed to the police that on May 29 or May 30, 2019 she had personally observed "approximately 4-5 ounces of meth, marijuana, and approximately twenty Ecstasy pills in the kitchen area" of the house at 327 Quittapahilla Drive. Affidavit of Probable Cause, paragraph 6, Exhibit A. However, upon execution of the Search Warrant on June 4, 2019 the police found only .18 gram of meth in one bedroom, .88 gram of meth in a second bedroom, a total of 141.51 grams

of marijuana, and no Ecstasy pills. See Incident Report, p. 10-11, Exhibit B; and PA State Police Bureau of Forensic Services lab report, Exhibit D.

14. The Affidavit of Probable Cause for the Search Warrant contained reckless material falsehoods, and recklessly omitted material facts, such that the finding of probable cause was fatally tainted. The Defendant is entitled to a hearing on this issue under Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978). See also United States v. Yusuf, 461 F. 3d 374, 383-385 (2006).

15. The Affidavit of Probable Cause failed to set forth facts to show the reliability or veracity of Erma Williams.

16. The Affidavit of Probable Cause failed to establish probable cause for the Search Warrant.

WHEREFORE, it is requested that the Court schedule a Franks hearing. It is further requested that all of the evidence seized by the North Cornwall Police Department, Lebanon, PA during the search conducted on June 4, 2019 at 327 Quitapahilla Drive, Lebanon, PA be suppressed, including but not limited to all controlled substances, drug paraphernalia, firearms, ammunition, cell phones, currency, and all other seized items or property of any kind.

Respectfully submitted,

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**CERTIFICATE OF NON-CONCURRENCE**

Assistant U.S. Attorney Johnny Baer does not concur in the foregoing Motion To Suppress Evidence.

August 19, 2020

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was electronically served on the individuals listed below on the date indicated.

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